

HOUSE BILL 401

A2

2lr2446
CF SB 874

By: **Delegates McHale, Clippinger, and Hammen**

Introduced and read first time: February 1, 2012

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 21, 2012

CHAPTER _____

1 AN ACT concerning

2 **Baltimore City – Alcoholic Beverages – Refillable Containers**

3 FOR the purpose of authorizing certain Class B licenses to include a certain off-sale
4 privilege under certain circumstances, notwithstanding certain provisions;
5 creating in Baltimore City a refillable container license; authorizing the Board
6 of Liquor License Commissioners to issue the license to a holder of ~~a Class B~~
7 ~~beer and light wine or a Class B beer, wine and liquor license issued for a~~
8 ~~restaurant~~ any class of alcoholic beverages license issued by the Board except a
9 Class C license and a Class M–G license; specifying that a holder of the license
10 may sell draft beer for consumption off the licensed premises in a certain
11 refillable container ~~to a certain individual; prohibiting a holder of a license from~~
12 ~~displaying or providing shelving for beer for off-premises consumption;~~
13 requiring a refillable container to meet certain requirements; requiring an
14 applicant for the license to complete a certain form and pay a certain fee;
15 requiring that certain applicants meet certain advertising, posting of notice, and
16 public hearing requirements ~~be met~~; specifying the term of the license;
17 requiring that receipts collected under the license be included in a certain
18 calculation of average daily receipts; specifying the hours of sale for the license;
19 allowing a holder of the license to ~~exercise the privileges of the license only if~~
20 ~~the licensed premises is open for business as a restaurant~~ refill only a refillable
21 container that was branded by the license holder; ~~authorizing~~ requiring the
22 Board to adopt certain regulations; making a technical change; and generally
23 relating to alcoholic beverages in Baltimore City.

24 BY repealing and reenacting, without amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Article 2B – Alcoholic Beverages
 2 Section 1–102(a)(1) and (22) ~~and~~, 8–203(a) and (b), 9–204.1(f)(1), and
 3 12–108(a)(1)
 4 Annotated Code of Maryland
 5 (2011 Replacement Volume)

6 BY repealing and reenacting, with amendments,
 7 Article 2B – Alcoholic Beverages
 8 Section 6–201(d)(1)(v) and (vi), 9–204.1(f)(2), and 12–113(c)
 9 Annotated Code of Maryland
 10 (2011 Replacement Volume)

11 BY adding to
 12 Article 2B – Alcoholic Beverages
 13 Section 8–203(e) and 9–204.1(f)(8)
 14 Annotated Code of Maryland
 15 (2011 Replacement Volume)

16 ~~BY repealing and reenacting, with amendments,~~
 17 ~~Article 2B – Alcoholic Beverages~~
 18 ~~Section 12–113(e)~~
 19 ~~Annotated Code of Maryland~~
 20 ~~(2011 Replacement Volume)~~

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article 2B – Alcoholic Beverages**

24 1–102.

25 (a) (1) In this article the following words have the meanings indicated.

26 (22) (i) 1. “Restaurant” means an establishment:

27 A. Which accommodates the public;

28 B. Which is equipped with a dining room with facilities
 29 for preparing and serving regular meals; and

30 C. In which the average daily receipts from the sale of
 31 foods exceed the average daily receipts from the sale of alcoholic beverages.

32 2. However the board of license commissioners in any
 33 county by regulation may prescribe a different standard as to what constitutes a
 34 restaurant.

1 3. For a restaurant in Baltimore City, the average daily
2 receipts from the sale of food must be at least 40% of the total daily receipts of the
3 establishment.

4 (ii) In Baltimore City, the term “food” as used in the definition
5 of “restaurant”, whether the definition is established by State law or by regulations
6 adopted by the Board of License Commissioners, may not include any ingredient or
7 garnish used with or mixed with an alcoholic beverage that is prepared and served for
8 consumption on the licensed premises.

9 (iii) In Harford County a “restaurant” as used in § 5–201 and §
10 6–201(n)(9) of this article means a business establishment for the accommodation of
11 the public, fully equipped with a proper and adequate dining room, tables, chairs and
12 sufficient facilities for preparing and serving regular meals, as may be approved by the
13 Liquor Control Board. The Board and Department of Health shall approve its sanitary
14 facilities, running hot and cold water, equipment for the proper cleaning of dishes and
15 kitchenware and adequate toilets. At all times there must be sufficient food on the
16 premises for the regular serving of meals, with a proper sign or signs in front of the
17 establishment designating “restaurant” or food and beverages sold, and not
18 advertising any other business. In this establishment the average gross monthly
19 receipts from the sale of foods cooked or prepared and served on the premises where
20 the license is exercised, and other foods, commodities and items defined by the Liquor
21 Control Board, shall exceed 50 percent of the average monthly receipts from the sale of
22 beer and wine, except that a restaurant serving food and beverages whose gross
23 monthly receipts from the sale of food averages \$1,500 or more may not be required to
24 sell food and food commodities in excess of 50 percent of the average monthly receipts
25 from the sale of beer and wine.

26 (iv) The requirements of this section relating to average daily
27 receipts are not applicable to any licenses issued in Cecil County.

28 6–201.

29 (d) (1) (v) **1. [In] EXCEPT AS PROVIDED IN SUBSUBPARAGRAPH**
30 **2 OF THIS SUBPARAGRAPH, IN an area coterminous with the 47th Alcoholic**
31 **Beverages District as that district existed before the Legislative Districting Plan was**
32 **ordered by the Maryland Court of Appeals on June 21, 2002, a Class B beer, wine and**
33 **liquor license issued for use in a restaurant:**

34 **[1.] A. After July 1, 1991 may not include an off–sale**
35 **alcoholic beverages privilege;**

36 **[2.] B. Before July 1, 1991 with an on–sale**
37 **alcoholic beverages privilege only may not be changed or altered to include an off–sale**
38 **alcoholic beverages privilege;**

1 [3.] C. Before July 1, 1991 with both on- and
 2 off-sale alcoholic beverages privileges may continue to be sold, renewed, or transferred
 3 within the 47th Alcoholic Beverages District with both privileges; and

4 [4.] D. Except as provided in subparagraph (vi) of this
 5 paragraph, before July 1, 1991 may not include an off-sale privilege for sales of
 6 alcoholic beverages from 12 midnight on Saturday to 2 a.m. on Monday.

7 2. A LICENSE SPECIFIED UNDER
 8 SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH MAY INCLUDE AN OFF-SALE
 9 PRIVILEGE FOR SALES OF REFILLABLE CONTAINERS UNDER A REFILLABLE
 10 CONTAINER LICENSE ISSUED IN ACCORDANCE WITH § 8-203(E) OF THIS
 11 ARTICLE.

12 (vi) The sales prohibition in subparagraph [(v)4] (V)1D of this
 13 paragraph does not apply to a Class B beer, wine and liquor licensee:

14 1. Whose license was issued before July 1, 1991; and

15 2. Who prior to July 1, 1991 operated the premises and
 16 exercised the sales privileges under the license on Sundays.

17 8-203.

18 (a) The provisions of this section only apply in Baltimore City.

19 (b) In this section, "Board" means the Board of License Commissioners of
 20 Baltimore City.

21 (E) (1) THERE IS A REFILLABLE CONTAINER LICENSE.

22 (2) THE BOARD MAY ISSUE A REFILLABLE CONTAINER LICENSE
 23 TO A HOLDER OF ~~A CLASS B BEER AND LIGHT WINE OR A CLASS B BEER, WINE~~
 24 ~~AND LIQUOR LICENSE ISSUED FOR A RESTAURANT~~ ANY CLASS OF ALCOHOLIC
 25 BEVERAGES LICENSE ISSUED BY THE BOARD EXCEPT A CLASS C LICENSE AND A
 26 CLASS M-G LICENSE.

27 (3) ~~A~~ SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, A
 28 REFILLABLE CONTAINER LICENSE ENTITLES THE HOLDER TO SELL DRAFT BEER
 29 FOR CONSUMPTION OFF THE LICENSED PREMISES:

30 ~~(4) IN~~ IN A REFILLABLE CONTAINER WITH A CAPACITY OF
 31 NOT LESS THAN 32 OUNCES AND NOT MORE THAN 128 OUNCES; ~~AND~~

1 ~~(H) ONLY TO AN INDIVIDUAL WHO HAS PURCHASED FOOD~~
2 ~~OR AN ALCOHOLIC BEVERAGE FROM THE LICENSED PREMISES.~~

3 ~~(4) IN AREAS OF THE PREMISES THAT ARE ACCESSIBLE TO THE~~
4 ~~PUBLIC, A HOLDER OF A REFILLABLE CONTAINER LICENSE MAY NOT DISPLAY~~
5 ~~OR PROVIDE SHELVING FOR BEER FOR OFF-PREMISES CONSUMPTION.~~

6 (4) TO BE USED AS A REFILLABLE CONTAINER UNDER
7 PARAGRAPH (3)(I) OF THIS SUBSECTION, A CONTAINER SHALL:

8 (I) BE SEALABLE;

9 (II) BE BRANDED WITH AN IDENTIFYING MARK OF THE
10 LICENSE HOLDER;

11 (III) BEAR THE FEDERAL HEALTH WARNING STATEMENT
12 REQUIRED FOR CONTAINERS OF ALCOHOLIC BEVERAGES UNDER 27 C.F.R.
13 16.21;

14 (IV) DISPLAY INSTRUCTIONS FOR CLEANING THE
15 CONTAINER; AND

16 (V) BEAR A LABEL STATING THAT:

17 1. CLEANING THE CONTAINER IS THE
18 RESPONSIBILITY OF THE CONSUMER; AND

19 2. THE CONTENTS OF THE CONTAINER ARE
20 PERISHABLE AND SHOULD BE REFRIGERATED IMMEDIATELY AND CONSUMED
21 WITHIN 48 HOURS AFTER PURCHASE.

22 (5) BEFORE THE BOARD ISSUES A REFILLABLE CONTAINER
23 LICENSE TO AN APPLICANT:

24 (I) THE APPLICANT SHALL:

25 1. COMPLETE THE FORM THAT THE BOARD
26 PROVIDES; AND

27 2. PAY AN ANNUAL LICENSE FEE OF \$500; AND:

28 A. \$500 FOR AN APPLICANT WHOSE ALCOHOLIC
29 BEVERAGES LICENSE DOES NOT HAVE AN OFF-SALE PRIVILEGE; OR

1 B. \$50 FOR AN APPLICANT WHOSE ALCOHOLIC
 2 BEVERAGES LICENSE HAS AN OFF-SALE PRIVILEGE; AND

3 (II) ~~THE~~ AN APPLICANT WHO HOLDS A LICENSE WITHOUT
 4 AN OFF-SALE PRIVILEGE SHALL MEET THE SAME ADVERTISING, POSTING OF
 5 NOTICE, AND PUBLIC HEARING REQUIREMENTS AS THOSE FOR THE LICENSE
 6 THAT THE APPLICANT HOLDS SHALL BE MET.

7 (6) THE TERM OF A REFILLABLE CONTAINER LICENSE ISSUED TO
 8 A SUCCESSFUL APPLICANT IS THE SAME AS THAT OF THE LICENSE THAT THE
 9 APPLICANT HOLDS.

10 (7) RECEIPTS COLLECTED UNDER A REFILLABLE CONTAINER
 11 LICENSE ARE TO BE INCLUDED IN THE CALCULATION OF AVERAGE DAILY
 12 RECEIPTS FROM THE SALE OF ALCOHOLIC BEVERAGES UNDER
 13 § 1-102(A)(22)(I)3 OF THIS ARTICLE.

14 (8) THE HOURS OF SALE FOR A REFILLABLE CONTAINER
 15 LICENSE; ~~ARE THE SAME~~

16 (I) BEGIN AT THE SAME TIME AS THOSE FOR THE LICENSE
 17 ALREADY HELD BY THE PERSON TO WHOM THE REFILLABLE CONTAINER
 18 LICENSE IS ISSUED; AND

19 (II) END AT MIDNIGHT.

20 (9) ~~THE HOLDER OF A REFILLABLE CONTAINER LICENSE MAY~~
 21 ~~EXERCISE THE PRIVILEGES OF THE LICENSE ONLY IF THE LICENSED PREMISES~~
 22 ~~IS OPEN FOR BUSINESS AS A RESTAURANT~~ A LICENSE HOLDER MAY REFILL
 23 ONLY A REFILLABLE CONTAINER THAT WAS BRANDED BY THE LICENSE HOLDER.

24 (10) THE BOARD ~~MAY~~ SHALL ADOPT REGULATIONS TO CARRY OUT
 25 THIS SUBSECTION, ~~INCLUDING A LIMIT ON THE NUMBER OF REFILLABLE~~
 26 ~~CONTAINER LICENSES TO BE ISSUED.~~

27 9-204.1.

28 (f) (1) This subsection applies only in the 46th alcoholic beverages
 29 district.

30 (2) Notwithstanding § 6-201(d)(1)(vii) of this article, AND SUBJECT
 31 TO PARAGRAPH (8) OF THIS SUBSECTION, the Board may issue a Class B beer, wine
 32 and liquor license:

1 (i) For a restaurant in ward 26, precinct 8, if the restaurant has
2 a minimum capital investment of \$700,000, a seating capacity exceeding 150 persons,
3 and average daily receipts from the sale of food that are at least 65% of the total daily
4 receipts of the restaurant;

5 (ii) For a restaurant in ward 4, precinct 1 or ward 22, precinct 1,
6 if the restaurant has a minimum capital investment of \$700,000, a seating capacity
7 that exceeds 75 persons, average daily receipts for the sale of food that are at least
8 65% of the total daily receipts of the restaurant, and no sales for off-premises
9 consumption;

10 (iii) For not more than three restaurants in a residential planned
11 unit development for Silo Point as approved by the Mayor and City Council of
12 Baltimore City in Ordinance 04-697 on June 23, 2004, if the restaurant has a
13 minimum capital investment of \$700,000, a seating capacity that exceeds 75 persons,
14 average daily receipts from the sale of food that are at least 65% of the total daily
15 receipts of the restaurant, and no sales for off-premises consumption; and

16 (iv) For not more than three restaurants in a business planned
17 unit development in ward 24, precinct 5 of the 46th alcoholic beverages district, which
18 at all times shall be coterminous with the 46th Legislative District in the Legislative
19 Districting Plan of 2002 as ordered by the Maryland Court of Appeals on June 21,
20 2002, if each restaurant has a minimum capital investment of \$700,000, a seating
21 capacity that exceeds 75 persons but is not more than 150 persons, average daily
22 receipts from the sale of food that are at least 65% of the total daily receipts of the
23 restaurant, and no sales for off-premises consumption.

24 **(8) NOTWITHSTANDING PARAGRAPH (2)(II) THROUGH (IV) OF**
25 **THIS SUBSECTION, A LICENSE SPECIFIED UNDER THIS SUBSECTION, INCLUDING**
26 **A LICENSE THAT ALLOWS NO SALES FOR OFF-PREMISES CONSUMPTION, MAY**
27 **INCLUDE AN OFF-SALE PRIVILEGE FOR SALES OF REFILLABLE CONTAINERS**
28 **UNDER A REFILLABLE CONTAINER LICENSE ISSUED IN ACCORDANCE WITH §**
29 **8-203(E) OF THIS ARTICLE.**

30 12-108.

31 (a) (1) A licensee licensed under this article, or any employee of the
32 licensee, may not sell or furnish any alcoholic beverages at any time:

33 (i) To a person under 21 years of age for the underage person's
34 own use or for the use of any other person; or

35 (ii) To any person who, at the time of the sale, or delivery, is
36 visibly under the influence of any alcoholic beverage.

37 12-113.

1 (c) **[No] EXCEPT AS PROVIDED IN § 8-203(E) OF THIS ARTICLE, NO** retail
2 dealer, or agent or employee of such retail dealer shall refill any container of alcoholic
3 beverages with any substance whatsoever after such container has once been emptied
4 of its original contents.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 July 1, 2012.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.